BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2012] NZREADT 55

READT 006/11

IN THE MATTER OF	an appeal under s.111 of the Real Estate Agents Act 2008
BETWEEN	**DONALD ROY NIGHTINGALE**
	Appellant
AND	**THE REAL ESTATE AGENTS AUTHORITY (CAC 10055)**
	First Respondent
AND	**HYE JUNG WON LEE (aka Julia Won), Kerry Godfrey and Barfoot & Thompson Ltd**
	Second respondents

BY CONSENT HEARD ON THE PAPERS

MEMBERS OF TRIBUNAL

Judge P F Barber - Chairperson
Mr G Denley - Member
Mr J Gaukrodger - Member

DATE OF THIS THRESHOLD RULING 10 September 2012

APPEARANCES

The appellant on his own behalf
Mr M J Hodge and Ms N Wilde, counsel for the Authority
Mr T D Rea, counsel for second respondents

THRESHOLD RULING OF THE TRIBUNAL

Introduction

[1] The appellant appeals against a 15 December 2010 decision of Complaints Assessment Committee 10055 to take no further action on his complaint against licensees, Hye Jung Won Lee (aka Julia Won), Kerry Godfrey, and Barfoot & Thompson Ltd.

[2] The Committee had concluded that any further action was inappropriate or unnecessary because it considered the complaint related to matters which had been determined by our civil Courts. The appellant had taken civil action against Barfoot & Thompson Ltd to recover the commission paid by him on the transaction the subject of his complaint, namely, the sale of his property at Dairy Flat, Auckland. The District Court dismissed the appellant's claim, as did the High Court on appeal. For reasons set out below, we have been asked by the parties to address the threshold issue of whether this appeal should be stayed as an abuse of process.

[3] Somehow or other this file got temporarily mislaid in the registry, and we apologise to the parties for any delay from that.

The Decision of the Committee

[4] In its brief decision of 15 December 2010, the Committee noted that *"The complaint [of the appellant] centres around a transaction whereby Barfoot & Thompson sold the complainant's property in Dairy Flat, Auckland and Mr Nightingale believed the agency had no right to deduct a commission for that sale".* The Committee gave its reason for deciding to take no further action on the complaint as that *"On the information provided it is clear that the complaints relate to matters that have been extensively and conclusively dealt with by the New Zealand courts. The Committee believes that those avenues have exhausted the matter*".

Facts

[5] The facts are set out in the High Court judgment on the civil dispute between the parties at pages 18 and 19 of the High Court judgment (per Venning J, 22/10/09, Auckland registry CIV-2009-404-004073) as follows:

> *"**Background***
>
> *[2] In early 2006 the appellants were interested in selling their property. They listed it for sale with two agents. The Professionals, Albany and the respondent [Barfoot & Thompson Ltd]. The property did not sell and the appellants terminated the agencies in September 2006.*
>
> *[3] In February 2007 one of the respondent's agents approached Donald Nightingale. The agent had purchasers who were interested in it. Donald Nightingale, who acted on behalf of both appellants, agreed to allow the prospective purchasers through the property but on the basis that the agent was the agent for the purchasers, not the appellants.*
>
> *[4] On or about 23 February 2007 Mr Godfrey, a salesman with the respondent and known to Mr Nightingale, attended the appellants' property and presented an offer for the property. The offer was in the standard form agreement for sale and purchase of real estate produced by the Real Estate Institute and the Auckland District Law Society. The price was 1.4 million dollars. Mr Nightingale rejected it out of hand.*
>
> *[5] A few days later, when Mr Nightingale was in Whangarei, Mr Godfrey faxed an amended offer for the property through to him. The offer was from the same purchaser. The same form was used. The initial offer of $1.4 million was*

crossed out and an increased figure of $1.45 million inserted. The documents faxed to Mr Nightingale were limited to two pages, the front page of the standard form agreement and the execution page. The front page provided the details of the parties, the property, the price, deposit and settlement. It also recorded the sale was by the respondent and noted the rates of charges to the vendor. The execution page included further terms specific to the particular transaction. The middle pages containing the general terms of the agreement were not faxed through.

[6] Mr Nightingale counter-offered at $1.52 million. He also struck out the reference on the front page to the agent's charges to the vendor. A number of further counter-offers were exchanged, all by fax. At one stage a fresh front page was used as the agreement had been redrawn so many times. It repeated that the sale was by the respondent and provided for the charges to the vendor. Mr Nightingale did not strike out the charges to vendor clause in the second form. The agreement for sale and purchase was finally concluded by an exchange of faxes on 27 February.

[7] Included on the front page of the standard form of agreement used was the following clause:

> *'It is agreed that the vendor sells and the purchaser purchases the above described property, and the chattels included in the sale, on the terms set out above, and the General and Further Terms of Sale.*

[8] The general terms of sale included clause 11. Clause 11 provided as follows:

> *11.0 Agent*
>
> *11.1 If the name of a licensed real estate agent is stated on the front page of this agreement it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor appoints as the vendor's agent to effect the sale. The vendor shall pay the agent's charges including GST for effecting such sale."*

The Issue

[6] The preliminary (and in our view, determinative) issue on the appeal is whether it was open to the Committee to take no further action in respect of these complaints in light of the civil litigation which had already taken place i.e. would it be an abuse of process to proceed with this appeal?

Stance of the Appellant

[7] The appellant put his case to us as follows:

> *"1. Firstly, regarding the Sales Agreement Mr Rea refers to the High Court judgement of Justice Venning 17.2.2(4).*
>
> *I reply that the agreement was only shown to me and rejected outright (30). It is not reasonable that I would read or retain a copy of the Sales*

Agreement at that time. After further offers and negotiations by phone and fax copies of front and signature page only were signed.

2. *(36)g If there is no legally enforceable obligation to give a copy what is the purpose of the full Sales Agreement? A full copy was never made available.*

3. *17.2.3 Judge Sharp determined in the District Court decision that a copy of the Sales Agreement was never left with me.*

4. *17.3 Substitution of falsified Front Page of Sales Agreement. As stated in my complaint and Appeal, this matter was not dealt with in the District Court. A private agreement was made without my knowledge or agreement, between my counsel Mr Barter and Mr Rea to not proceed with that matter. When questioned later Mr Barter stated THAT THIS WAS CRIMINAL MATTER AND HE DID NOT WISH TO RAISE IT IN CIVIL PROCEEDINGS. I do not believe I was well represented by Mr Barter.*

5. *Mr Rea wishes to dismiss this matter of Fraud without any explanation of how or why the Front Page was reconstructed. The evidence is clear that the front page of the Sales Agreement was "falsified" and substituted without my knowledge. Ms Won admitted in her evidence, given under oath, that she had reconstructed and substituted the front page and had not advised me of the fact.*

6. *In reply to submission of M. Hodge of Meredith Connell. 4. The present case. 4.1 The finding of Judge Sharp in the District Court was that a full copy of the Sales Agreement was NEVER left with me.*

7. *4.2 In relation to the substitution of a falsified front page of the Sales Agreement as stated earlier, this was not pursued due to the private agreement between Mr Barter and Mr Rea. This allegation is correct, and can be proven by the evidence. If "Highly Relevant to my Civil Claim" then obviously I was not well represented by my counsel Mr Barter.*

I ask that these submissions be considered in deciding further action on my complaint and appeal."

[8] We observe that the appellant seeks to relitigate issues which have been determined by Venning J.

The Submissions for the Second Respondent

[9] Mr Rea put it that the threshold issue is whether the appellant seeks to re-litigate matters which have already been determined, or which ought properly to have been pursued as part of the appellant's case in prior civil proceedings. He submits that, if that is the case, then the appeal will be an abuse of process, and ought to be stayed.

[10] Mr Rea then noted that we have the power to regulate our procedure as we see fit, pursuant to s.105(1) of the Real Estate Agents Act 2008, subject to the rules of

natural justice, that Act and its regulations (s.105(2)). He puts it that it is entirely appropriate to set this issue as a preliminary question for determination, either by analogy with Rule 10.15 of the High Court Rules, or with principles concerning striking out or staying proceedings pursuant to Rule 15.1. We agree.

[11] Mr Rea referred to relevant legal principles as involving issues of abuse of process, the doctrine of *res judicata,* and the rule in *Henderson v Henderson* (1843) 3 Hare 100. He then put it:

> *"**Abuse of Process – Attempts to re-litigate matters already determined***
>
> *6. Hunter v Chief Constable of the West Midlands Police [1982] AC 529 at 541, 3 All ER 727 (HL) at 733, per Lord Diplock, is generally regarding as the leading statement:*
>
> > *"The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack on a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."*
>
> ***Res Judicata***
>
> *7. The Court of Appeal addressed the issue of res judicata in Shiels v Blakeley [1986] 2 NZLR 262, Somers J, giving judgment for the Court, said at p.266, line 24:*
>
> > *" ... that where a final judicial decision has been pronounced by a New Zealand judicial tribunal of competent jurisdiction over the parties to, and the subject matter of, the litigation, any party or privy to such litigation, as against any other party or privy thereto, is estopped in any subsequent litigation from disputing or questioning the decision on the merits. See Spencer Bower and Turner, Res Judicata (2nd ed, 1969) para 9. The reasons for the existence of the rule are not in doubt. They were stated by Lord Blackburn in Lockyer v Ferryman (1877) 2 App Case 519,530: "The object of the rules of res judicata is always put upon two grounds -the one public policy, that it is in the interest of the State that there should be an end of litigation, and the other, the hardship on the individual, that he should not be vexed twice for the same cause.""*
>
> ***The rule in Henderson v Henderson***
>
> *8 There is long-established authority to the effect that the estoppel against raising issues in subsequent proceedings extends beyond matters that were expressly determined in earlier proceedings and includes matters that could have been brought in the earlier proceeding but which were not pursued.*

9 The most recent statement by the High Court regarding the rule in Henderson v Henderson is in Sim v Moncrieff Pastorial Ltd & Ors:

> *"As established in Henderson v Henderson if a point ought properly to have been put before a Court which is the subject of litigation, a party may not subsequently at a later date re-open old wounds to raise a matter. To permit such a course would be contrary to the principle of finality in litigation."*

10 The same principle is applied in the Australian Courts, referred to as "Anshun estoppel". A recent statement of the "Anshun principle" was set out by the Supreme Court of Victoria in Henderson v Henderson is in Sim Moncrieff Pastorial Ltd & Ors [2010] VSC 89, 30 March 2010, para 23:

> *"An Anshun estoppel may arise where a matter sought to be raised by way of claim or defence in a later proceeding is so closely connected with the subject matter of an earlier proceeding that it was to be expected that it would have been relied upon in that earlier proceeding."*

[12] Mr Rea then notes that in the course of his submissions the appellant put it that:

> *"[the] appeal relates to three matters, mainly:*
>
> *(a) The breach of real estate ethics;*
>
> *(b) The failure of Barfoot & Thompson agents to provide or produce a full copy of the sales agreement;*
>
> *(c) That Barfoot & Thompson agents substituted a second version of the front page of the sales agreement."*

[13] The appellant has submitted that none of these matters were ruled upon by the courts or the committee of the Real Estate Agents Authority.

[14] Mr Rea accepts that the District and High Courts were not asked to rule upon matters of real estate ethics, and that it would not have been within their proper jurisdiction to have purported to do so. We agree. He puts it, however, that the appellant's allegations of ethical breach rely upon his assertions as to underlying facts which were the subject of conclusive determinations in the Court proceedings, which the appellant directly challenges in this appeal to us.

[15] Mr Rea then noted that the appellant also seeks to advance a theory of fraudulent conduct by the second respondents. Mr Rea submits that if it were ever appropriate to have made such an allegation in the circumstances of this case which (he submits) it is not, then that properly ought to have been pursued in the civil proceedings. Again we agree. Any suggestion of fraudulent conduct could have been raised before Judge Sharp and/or Venning J but was not. In any case, it is an aspect which those Judges did not feel the need to pursue on the facts.

[16] Mr Rea felt that the appellant's grounds of appeal to us are puzzling and suggests that, nevertheless, the main issues which form the essence of the appellant's complaint were those identified at paragraphs 19 to 36 of a 30 September

2010 letter from Mr Rea (of Glaister Ennor representing the second respondents) to the Real Estate Agents Authority which read:

> *"**B & T taking commission on the sale of a property without written or verbal authority***
>
> *19. This is the same issue that was raised by Mr Nightingale in his proceedings against B & T. The issue has been conclusively determined, with findings having been made against Mr Nightingale in both the District Court and High Court.*
>
> *20. The events in issue took place in 2007. This preceded the enactment of the Real Estate Agents Act 2008 and making of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2009. While it is doubtful that clause 11.1 of the standard form agreement would satisfy s.126 of the 2008 Act, unless provision were made for it to be signed also by the agent so as to comply with s.126(1)(a)(ii), the position has been settled for many years that this provision was sufficient compliance with s.62 of the Real Estate Agents Act 1976.*
>
> *21. There was nothing in the rules of the Real Estate Institute of New Zealand Incorporated, applicable at the time, preventing an agent from relying upon clause 11.1 as constituting its written agency authority. Under the present rules, marketing or offering a property for sale without an agency agreement would infringe rule 9.15, however, in 2007 no equivalent rule existed.*
>
> *22. There was no legal or moral duty placed on an agent to obtain a prior listing authority. This is self-evident from the fact that clause 11.1 was included as a general condition of sale in the standard form agreement for sale and purchase, prepared in cooperation between the Real Estate Institute of New Zealand and Auckland District Law Society, and an equivalent provision had been contained in many previous versions of the agreement. In the circumstances, there is no basis for upholding this aspect of Mr Nightingale's complaint.*
>
> ***B & T's failure to present a full copy of the sales agreement***
>
> *23. B & T did supply a full copy of the sales agreement to Mr Nightingale. This was supplied to Mr Nightingale at the time the initial offer was presented to him by Mr Godfrey. This is addressed at paragraph 40 of the High Court judgment.*
>
> *24. The Court found that Mr Nightingale had the opportunity to read the full agreement but chose not to do so. It appears that Mr Nightingale did not retain a copy of the full agreement, but that is not any fault of B & T.*
>
> *25. Subsequent offers and counteroffers were transmitted by facsimile using only selected pages of the agreement. It was, however, patently clear that the pages that were transmitted were part of the larger document and were used as a convenient means of communicating offers, without any changes to the general terms of sale.*

26. Mr Nightingale accepted in cross-examination at trial that he knew that the general terms of sale were included in the agreement, and that they included a clause to the effect of cl.11.1 (refer to paragraphs 27 to 28 of the High Court judgment).

27. As Justice Venning observed at paragraph 36(g) of the High Court judgment, a copy of the agreement was made available to Mr Nightingale but he chose not to retain it, and it was open to him at any stage to have requested a further copy.

28. Nothing contained in the Real Estate Agents Act 1976 or the Institute's rules prevented negotiations from taking place using selected pages of the standard form agreement. This was, in fact, common practice when negations were by facsimile. There is no basis for upholding this aspect of Mr Nightingale's complaint.

Substitution of a "falsified" front page of the agreement

29. B & T denies emphatically the allegation that there was any falsification of documentation. There is simply no evidential foundation for an allegation of this nature to be properly made.

30. Mr Nightingale has supplied the Authority with a copy of a brief or evidence of a handwriting "expert", Jan Brunton. The brief was obtained by Mr Nightingale in relation to the District Court proceeding, and a copy of it was served on B & T. Responsibly, Mr Nightingale's legal counsel chose not to call Mr Brunton to give evidence.

31. There seems to be a suggestion contained within Ms Brunton's brief (although the allegation is not squarely made) that initials may have been forged on a facsimile version of the agreement for sale and purchase. No explanation has been provided as to what purpose might have been served by allegedly forging any initials.

32. B & T would have challenged Ms Brunton's qualification to appear as an expert witness, had she been called to give evidence at trial. Apart from the question of whether or not Ms Brunton was qualified to give expert handwriting opinion evidence, there is an obvious error in her brief that would have severely compromised her credibility as an expert document examiner.

33. Ms Brunton repeatedly referred to a B & T "stamp" that she evidently considered had been applied by hand to the agreement. She considered that there were two different stamps, as the top and bottom lines were of different heights and linear, and the actual written "Barfoot & Thompson" was of a different texture. She referred to this as the "thumbprint" of the stamps, and concluded that the thumbprints were from two different stamps.

34. As the writer advised Mr Nightingale's counsel during the trial, these are not stamps at all. B & T's name is <u>pre-printed</u> on all of the standard form

agreements used by it, and the alleged two different stamps were, in fact, the same original electronic imprint on the same original document.

35. Fundamentally, for the purposes of assessment of Mr Nightingale's complaint, Ms Brunton's brief is completely inconclusive on the issue of alleged falsification or forgery and does not support Mr Nightingale's allegation. The brief concludes at paragraph 17 that it cannot be proven with any certainty whether or not the initials referred to are authentic, as the documents inspected were not originals.

36. B & T takes serious exception to this aspect of Mr Nightingale's complaint. The allegation has no basis, and it is irresponsible to pursue."

[17] We agree that the above portions of Mr Rea's 30 September 2010 letter cover the appellant's complaints. We can only agree with the content from Mr Rea in those paragraphs.

[18] Mr Rea then dealt with the threshold issue in respect of each of these key allegations, in turn, as follows:

"17.1 ***B & T taking commission on the sale of a property without written or verbal authority***

17.1.1 As identified in Glaister Ennor's response to the Authority, this is the same fundamental issue that was raised by the appellant in the civil proceedings. The Court found that Barfoot & Thompson had authority to take commission by virtue of clause 11.1 of the agreement for sale and purchase. That was the essential legal issue in the proceedings, determined in favour of Barfoot & Thompson by the High Court.

17.1.2 This issue is res judicata. The appellant is estopped from raising it. It is an abuse of process to seek to re-litigate this issue on this appeal.

17.2 ***B & T's failure to present a full copy of the sales agreement***

17.2.1 This is the issue (b) referred to in the appellant's submissions which the appellant asserts was not determined by the Court.

17.2.2 This was determined by the Court, as is clear from the following passages of the High Court judgment:

> *"[4] On or about 23 February 2007 Mr Godfrey, a salesman with the respondent and known to Mr Nightingale, attended the appellants' property and presented an offer for the property. The offer was in the standard form agreement for sale and purchase of real estate produced by the Real Estate Institute and Auckland District Law Society.*
>
> *[30] Further, in this case Mr Nightingale had the opportunity to read the clause when the agreement was first presented to him by Mr Godfrey. The fact that the appellants chose not to read it and have subsequently signed the agreement cannot assist them.*

[36]g) ... There is no legally enforceable obligation to give a copy. A copy was in any event made available."

17.2.3 The Court has determined as a fact that the appellant was presented with the full agreement. It is not now open to the appellant to argue (as he has at paragraph 7 of his submissions) that "a full copy of the Sales Agreement was never presented, provided, supplied or offered to [him].

17.3 ***Substitution of a "falsified" front page of the agreement***

17.3.1 The appellant alleges that the front page of the agreement was falsified and that the second respondents acted fraudulently.

17.3.2 Numerous arguments and causes of action were pursued on the appellant's behalf in the prior civil proceedings. These included: unjust enrichment; money had and received; promissory estoppel; collateral contract; breach of Fair Trading Act 1986; breach of Real Estate Agents Act 1976; conversion. Fraud was not alleged (responsibly, by the appellant's legal adviser at the time).

17.3.3 The appellant refers in his submissions to the brief of evidence of Jan Brunton. This brief was served, however, Mr Brunton was not called, nor was any argument advanced relating to matters in Ms Brunton's brief.

17.3.4 The reasons Ms Brunton was not called (and the second respondents' stance in respect of this allegation) is address at paragraphs 29 to 36 of Glaister Ennor's letter of 30 September 2010 [set out above].

17.3.5 It was clearly open to the appellant to have pursued this allegation in the Court proceedings. If it was considered that there was any responsible basis for such an allegation to be made, then it surely would have been. It would certainly have been relevant to the legal analysis of the parties' contractual obligations, as is evident from the following passage of the High Court judgment.

> *"**In the absence of fraud** or misrepresentation people are bound by writing to which they have put their signature whether they have read its contents or have chosen to leave them unread. The appellants cannot say that they have been misled by the respondents in this case." (emphasis added)*

17.3.6 This is squarely with the principle in Henderson v Henderson."

[19] Again, we can only agree with those submissions of Mr Rea.

[20] Mr Rea submits that the core of this matter concerns a dispute over real estate commission charged five years ago. He referred to the dispute having already consumed extensive judicial resources with three days in the District Court, a High Court appeal, and a Complaints Assessment Committee determination.

[21] Mr Rea submits that the appeal is frivolous, vexatious and an abuse of process; that the allegations presently made concerning alleged fraudulent conduct are lacking in any proper foundation and would not be made if the appellant had sensible legal advice, which he previously did have but has no longer retained for the purposes of his ongoing complaints; and that, accordingly, the appeal ought properly to be stayed or summarily dismissed.

Discussion

Issue estoppel

[22] Disciplinary proceedings have a different purpose and give rise to different considerations than civil proceedings taken to obtain financial remedies. We agree that principles relating to issue estoppel must not be applied too rigidly where that would have the effect of undermining the consumer protection purpose of the disciplinary regime contained in the Real Estate Agents Act 2008. However, we accept that issue estoppel principles are relevant to the exercise by a Committee (or to us on appeal) of the discretion to take no further action on a complaint. In the present case, it is submitted for the Authority that it was open to the Committee to decide to take no further action for the reason it gave.

[23] Ms Wilde accepted that Mr Rea, counsel for the second respondents, has correctly identified the leading authorities dealing with the general principles of issue estoppel (and overlapping/related doctrines) in his submissions; and she also considered the application of these principles in the disciplinary jurisdiction of the 2008 Act.

[24] Ms Wilde submitted there must be such a nexus between the parties to the original proceeding and the parties to the disciplinary proceeding that to estop the complaint would produce a fair and just result having regard to the purposes of the doctrine of estoppel and its effect on the party estopped; *Shiels v Blakeley, Court of Appeal* [1986] 2 NZLR 262, page 14.

[25] We reiterate that disciplinary proceedings give rise to different considerations and are for a different purpose than civil proceedings. In civil proceedings, the courts are concerned with determining the respective parties' obligations and liabilities, whereas disciplinary proceedings entail a much wider consideration of a licensee's conduct, focussing on maintaining industry standards and the protection of consumers. Therefore, care must be taken to ensure that legitimate disciplinary issues are not ignored simply because of the result reached in other litigation. The mere fact that there has been civil litigation does not mean that disciplinary proceedings cannot proceed in respect of the same factual matters. Furthermore, while factual findings made by the courts may preclude us from revisiting those findings, the result consequent on the findings may be different in disciplinary proceedings than in the civil litigation.

[26] Accordingly, Ms Wilde submitted that the principles of issue estoppel must not be applied too rigidly but must take into account the different nature and purpose of disciplinary proceedings and must be applied to the facts and circumstances of the particular case. We entirely agree. Nevertheless, while an overly-rigid approach should not be taken, issue estoppel may apply and may justify a decision by a Committee (or us on appeal) to take no further action on a complaint.

Our Views on The present case

[27] In relation to the provision of a copy of the agreement, findings were made by the civil courts, and we see no reason to go behind those.

[28] In relation to the alleged substitution of the front page of the agreement, it appears that the appellant, through counsel, chose not to lead substantive evidence on this allegation at the hearing of the civil proceedings. Clearly, if the allegation is correct, it would have been highly relevant to the appellant's civil claim.

[29] Also, we have dealt above with the issues now raised by the appellant including the allegation of fraudulent conduct.

[30] Ms Wilde submits that in all the circumstances, given the civil litigation which has preceded this disciplinary proceeding, this is a case where it was open to the Committee to decide that no further action should be taken on the complaint.

[31] We agree with the law cited by both Mr Rea and Ms Wilde. However, the precise conduct of the licensee is different from the issue of contractual liability of the complainant for real estate commission; and even though that contractual dispute covered the real estate agents' conduct, Mr Nightingale may be entitled to have us focus more on the conduct issue than on the commission contract issue and it is not necessarily an abuse of process for this appeal to proceed.

[32] However, it happens that the conduct of the second respondents has been fully analysed by our said civil courts in the full context of the appellant's complaint to the Authority and in terms of his evidence and argument to us. The High Court dealt with the aspects of not providing a full copy of the agreement for sale and purchase at all the various stages of negotiation. We respectfully agree that was an understandable practice in the context of this case and we find that it did not constitute unsatisfactory conduct and, certainly, not misconduct under the Act. Similarly, the evidence about the various amendments, involving page substitution, to the front page of the agreement, does not reach the threshold for unsatisfactory conduct. We assess the facts as showing fairly normal conduct and negotiation for the sale and purchase of realty and there is no sign of any ethical breach by any of the second respondent licensees.

[33] We take the view that the doctrines of abuse of process and res judicata are clear and well-developed and that all ingredients, and prospective consequences, of the appellant's allegations against the second respondents have been fully dealt with in the course of justice by the said civil courts.

[34] The appellant has simply been held to the contract which he signed. We agree with the stance of the Authority. Accordingly, we find that it would be an abuse of process for this appeal to us to continue. We order that it is hereby stayed indefinitely.

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Judge P F Barber
Chairperson

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Mr G Denley
Member

_____
Mr J Gaukrodger
Member